

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

&

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 2ND APRIL 2007 / 12TH CHAITHRA 1929

RCEv..No. 399 OF 2004

RCA.22/2000 OF RENT CONTROL APPELLATE AUTHORITY,,
KASARAGOD

RCP.27/1999 OF THE RENT CONTROL COURT, KASARAGOD

REVISION PETITIONER (RESPONDENT/RESPONDENT):

K. RAVEENDRAN, SON OF LATE KANNAN,
KANNA SUPER TEX, SRIRAMPET,
P.O. KASARAGOD.

BY ADV. SRI.D.KRISHNA PRASAD
SRI.D.NARENDRANATH
SRI.M.HARISHARMA
SRI.T.P.ELDHOSE

RESPONDENTS: APPELLANTS/PETITIONERS:

1. JAMALUDDIN.

2. BADRUDDIN.

THE RESPONDENTS ARE THE CHILDREN OF
K.S. HASSANKUTTY, RESIDING IN THALANGARA VILLAGE
KASARAGOD TALUK, P.O. THALANGARA.

BY ADV. SRI.ZAKEER HUSSAIN

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD
ON 02/04/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

RCR 399/2004

ORDER ON I.A. NO. 3564/2004IN RCR 399/2004

// DISMISSED //

2.4.2007.

SD/-,
P.R. RAMAN,
(JUDGE).

SD/-
ANTONY DOMINIC,
(JUDGE)

// TRUE COPY //

P.S. TO JUDGE.

knc/-

P.R. RAMAN & ANTONY DOMINIC, JJ.

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R.C.R. NO. 399 OF 2004

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DATED THIS, THE 2ND DAY OF APRIL, 2007.

ORDER

Raman, J.

Petitioner is the respondent in R.C.P. 27/1999 on the file of the Rent Control Court, Kasaragod. He is faced with an order of eviction, passed under Section 11(3) of the Kerala Buildings (Lease & Rent Control) Act.

2. The Rent Control Petitioners/landlords are joint owners of the shop room. Eviction was sought for the purpose of starting a business in ready made garments by the second petitioner. The Rent Control Court dismissed the petition under Section 11(3) on the ground that the second petitioner who was examined as PW.1 admitted that he was in gulf countries for three months, that he has not produced the passport which will reveal the period of stay etc. , that though he has stated that his bona fide need arose four years back no effective steps was taken by him to get the building surrendered by the tenant and that the rent was also increased in the meantime from Rs.1,800/- to Rs. 2,300/- about two years prior to the filing of the petition, that the landlords asked the tenant only once to

surrender the building prior to the filing of the eviction petition, and that the present petition was filed when the tenant failed to enhance the rent further from Rs. 2,300/- to Rs. 3,500-. Though PW.1 denied the same, the fact that there was an increase in the rent from Rs. 1800 to Rs. 2,300/- two years prior to the eviction petition was a circumstance which led the court below to accept the possibilities of claim for further enhancement as pleaded by the tenant.

3. Though it was contended that the tenant is mainly depending on the income derived from the business that is being conducted in the petition schedule building, no appreciable evidence was adduced in support thereof. Further, the tenant, while examined as RW.1, admitted that he has got 1/9th share in a lodge building at Puthur and having several other source of income and in the absence of any satisfactory evidence to claim the benefit of the second proviso, the Rent Control Court found that the tenant is not entitled to any such benefit. As regards the second limb of the second proviso, regarding the availability of alternate building also, the tenant failed to establish that there are no vacant suitable building available in the locality to carry on his business that is carrying out in the petition schedule

premises. On the other hand, the landlords succeeded to establish that there are suitable rooms available in the locality for the tenant for conducting the business now conducting in the petition schedule premises. On an overall consideration of the materials on record, the Rent Control court found that the bona fide need alleged is not proved. However, the tenant was found not entitled to the benefit under the second provision to Section 11(3) of the Act. Aggrieved thereby, the landlords went in appeal. The appellate court re-appreciated the entire evidence on record and found that the bona fide need as alleged in the petition stands proved, that the mere fact that the need alleged four years prior to the petition for eviction and the fact that the landlords did not file a petition earlier is not a ground to reject the petition if as a matter of fact there is bona fide need as alleged when the need arose for starting a business for PW.1 (second petitioner in the case).

4. In this case, it has been proved in evidence that the second petitioner is unemployed and he needed the petition schedule premises to start a business in ready made garments. Though the bona fide need as alleged is disputed by the tenant, relying on the passport produced by the landlords at appellate stage, which was marked as Ext.A3, it was contended

that the second petitioner/landlord had only a visiting visa for three months and the visit was not for any employment. Though the said passport was not produced before the Rent Control Court and that was also a circumstance relied on strongly by the Rent Control Court to reject the petition, the landlords produced the same before the Appellate Authority who has perused the same and found that it was only a visiting visa for three months and drew an inference that the visit of the second petitioner was not in connection with any employment or for seeking any employment. Further, the fact that there was an increase in the rate of rent from Rs.1,800/- to Rs, 2,300/- in no way could be said to be a ground for drawing any inference that the bona fide need as alleged is not proved. In this connection, reference may be made to **Bonny v. Koshy P. John** (2005(1) KLT SN. 145), wherein this Court held that periodical request for enhancement of rent as such is not a ground to hold that there is no bona fide need.

5. Learned counsel for the revision petitioner, however, contended that the appellate court ought not have received the passport as an additional evidence and Order 41 Rule 27 has no application as the Appellate Authority is not a court and only a personal designate to which

Order 41 Rule 27 will not apply. As rightly contended by the learned counsel appearing for the respondents, Rule 16(2) of the Kerala Buildings (Lease & Rent Control) Rules empowers the Appellate Authority to take additional evidence, if that Authority decides to make further enquiry in the matter. A Full Bench decision of this Court in **Parthakumar v. Ajith Viswanathan** (2006 (2) KLT 250) specifically adverted to Rule 16(2) in this regard and held that the Appellate Authority under the Kerala Building (Lease and Rent Control) Act is invested with powers to receive additional evidence under Rule 16(2) of the Act. It was further held that though the restrictions which are enumerated under Order 41 Rule 27 of the CPC are not made specifically applicable to the Appellate Authority under the Rent Control Act, it is only reasonable to assume that any Appellate Authority by nature of the appellate powers exercised by it must insist on satisfactory explanation as to why the additional documents sought to be produced before the Appellate Authority were not produced before the original authority. In other words, receipt of additional evidence by one party will not be automatic and the Appellate Authority will consider whether additional evidence so adduced should be accepted in evidence, whether any

material prejudice has been caused by the parties by receiving the same at a later stage and whether there was any laches on the part of the party who seeks to produce such additional evidence in not producing the same before the original authority - these are all well settled principles to be borne in mind while exercising the appellate power. Even if Order 41 Rule 27 as such may not apply, the Full Bench clearly stated that this principle has to be borne in mind while receiving additional documents. However, as far as the power of the Appellate Authority is concerned, there is no doubt that the Appellate Authority is empowered by the statutory rules to receive such additional documents. Even otherwise, receipt of additional documents is incidental to the Appellate power and it cannot be said that the Appellate power excludes the power to take such additional evidence. At any rate, in this case, in the light of Rule 16(2) of the Rules, when there is a specific empowerment on the Appellate Authority, no doubt could arise whether the Appellate Authority has got any power in this regard. We, therefore, hold that the Appellate Authority has got ample power to receive such additional documents. The appellate Authority did not automatically receive such additional documents. It found that the document produced is relevant and

material for a proper disposal of the case. As a matter of fact, the Rent Control Court dismissed the application on the ground that the passport of the second petitioner was not produced. When the question is as to whether the landlord is permanently employed in Gulf, in order to satisfy the Appellate Authority when the landlord himself produced the passport itself, there was nothing wrong in the Appellate Authority in receiving the same.

6. Then it was contended that the document produced was a manipulated one. We have for ourselves perused the passport produced before the Appellate Authority. We find that the same has been issued by the Regional Passport Officer, Kozhikode with seal and signature. There is nothing to show that the said passport issued in favour of the second petitioner is a document created. The document shows that the second petitioner had obtained only a visiting visa for three months and he returned to India soon after his visit, which also shows that his visit was not in connection with any employment. We may also make mention of one other circumstance, namely, that the Appellate Authority is none other than the District Court, Kasaragod. The Passport was produced before that Authority as per an Interim Application. It has been recorded by the District

Judge on the back side of the Passport that the same was produced on 20.6.2002, that the same was admitted in evidence by consent on 31.5.2004 and marked as Ext.A3. As such, the present contention against the receipt of the Passport itself is without any substance.

7. For the above reasons, we find that the finding of the Appellate Authority that the second petitioner (landlord) was not employed in Gulf and therefore, he continues to be unemployed and the bona fide need alleged in the petition has been proved, cannot be interfered with.

8. Regarding the benefit of the second proviso, as we have already noticed, in the absence of any evidence from the side of the tenant, whose burden is to prove the benefit thereunder and he having failed to do so, the finding regarding the same by the Rent Control court, as affirmed by the Appellate Authority being concurrent finding of fact, does not call for any interference by this Court.

In the result, we find that the revision petition lacks merits. it is accordingly dismissed.

At this stage of the proceeding, learned counsel for the revision petitioner sought for a reasonable time to surrender vacant possession of the

tenanted premises. After hearing both sides, we direct that the execution of the order passed by the Appellate Authority shall be deferred for a period of three months on condition that the revision petitioner/tenant shall file an undertaking before the Appellate Authority in the form of an affidavit, within a period of one month from today, along with the arrears of rent, if any, agreeing to surrender vacant possession of the tenanted premises on or before 3.9.2007, that he shall continue to pay an amount equivalent to the monthly rent by way of compensation for use and occupation until vacant possession is given and that he shall not induct any third party to the tenanted premises. In case any default is committed by the revision petitioner/tenant in complying with any one of the conditions as stipulated above, the landlords will be at liberty to move with the execution proceedings.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,

RCR 399/2004

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(JUDGE)

knc/-